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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. SE 89-58-M
A. C. No. 08-01026-05509

v.

Charlotte County Rock Plant

FLORIDA MINING & MATERIALS,
RESPONDENT

DECISION

Appearances: Stephen Alan Clark, Esq., for the Secretary of
Labor;
Archie B. Clark, Director, Human Resources and
Safety, for Respondent

Before: Judge Fauver

The Secretary of Labor brought this case for a civil penalty
under 110(a) of the Federal Mine Safety and Health Act of 1977,
30 U.S.C. 801 et seq.

Having considered the hearing evidence and the record as a
whole, I find that a preponderance of the substantial, reliable,
and probative evidence establishes the following Findings of Fact
and further findings in the Discussion below.

FINDINGS OF FACT

1. Respondent operates a limestone mine, known as the
Charlotte County Rock Plant, in North Fort Myers, Florida, which
produces limestone for sale or use in or substantially affecting
interstate commerce. It employs about 25 employees at the mine,
and its total employment in mining is about 690 employees.

2. On August 10, 1988, Federal Mine Inspector Harry Verdier
inspected the mine and issued Order 3250044 charging a violation
of 30 C.F.R. 56.9003, for operating a Michigan 125 front end
loader without operative brakes.

3. The front end loader did not have operative brakes.

4. The back-up alarm on the front end loader was also
inoperative.

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5. The front end loader was used to haul drill tubes from the storage area to the drill area, near a water-filled pit. The water in the pit was 40 to 50 feet deep.

6. The front end loader was also used to transport personnel from the drill area to a parking area near a repair shop, a distance of about one-half mile.

7. Three citations for brake defects had been issued at this mine before the date of Order 3250044. Two of them were issued to an independent contractor, Goodwin Construction Company, for its equipment. One of the citations was issued to Respondent for inadequate brakes on equipment owned and operated by Respondent.

DISCUSSION WITH FURTHER FINDINGS

The brakes on the Michigan 125 front end loader were inoperative when inspected by Mine Inspector Verdier on August 10, 1988. The vehicle had been used that morning without operative brakes, before the federal inspection, and it was reasonably likely that it would have been used again in the same defective condition, if the inspector had not ordered it to be withdrawn from service.

The equipment operator knew that the brakes were inoperative. The mechanic was also aware that the front end loader had defective brakes. The mechanic informed Mine Inspector Verdier that there had been problems with the master cylinder of the front end loader.

The front end loader also had an inoperative automatic back-up alarm signal. This fact would have been known to at least two of Respondent's employees: the equipment operator and the drill operator.

Respondent acknowledges that the violation was substantial and significant in terms of gravity. Its defense is that it should not be charged with high negligence because the equipment operator was required to report safety defects and failed to do so. The plant manager testified that "if the [equipment] operator gets on a piece of equipment and finds a defect, there is a reporting system through the card system that that defect is to be reported and recorded on a card." Tr. 42. He further testified that no defect was reported by the equipment operator before the inspection, and if the defective brakes had been reported to management, Respondent "would have parked that piece of equipment, tagged it out and not operated it until the brakes had been repaired." Tr. 44.

There are three prior citations for defective brakes on equipment operated at this mine. Two were issued in 1986 to an

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independent contractor doing work for Respondent; the third was issued later, in 1987, for equipment that was owned and operated by Respondent. Respondent had knowledge of the three citations when they were issued. If thus had ample prior knowledge of the safety standard for adequate brakes involved in the present case.

The fact that the front end loader was being operated without brakes and without a back-up alarm underscores a negligent disregard of safety standards respecting this vehicle. Considering all the evidence, I find that Respondent's employees were highly negligent in operating and permitting the operation of the front end loader without operative brakes and that their negligence is imputable to Respondent. It was within the authority and control of Respondent to supervise and train its employees and manage its operations to ensure that its equipment would not be operated without defective brakes, but Respondent failed to meet this statutory obligation.

Considering each of the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$1,000 is appropriate for this violation.

CONCLUSIONS OF LAW

1. The judge has jurisdiction over this proceeding.
2. Respondent violated 30 C.F.R. 56.9003 as charged in Order 3250044.

ORDER

Respondent shall pay the above civil penalty of \$1,000 within 30 days of this Decision.

William Fauver
Administrative Law Judge.